

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING**

7:00P.M., June 21, 2016

**George V. Massey Station, Second Floor Conference Room
516 West Loockerman Street, Dover, DE**

MINUTES

MEMBERS PRESENT: Chairperson Robert Overmiller, Carma Carpenter, Nancy Cordrey, Cathy Cowin, Bill Doolittle, Karen Eller, Ann Fisher, Lisa Gonzon, Dana Levy, Chris McIntyre, Carrie Melchisky, Keith Morton, Bill O'Neill, Jennifer Pulcinella, Howard Shiber and Kirsten Wolfington.

OTHERS PRESENT: Guests: Jill Floore/Red Clay SD & WEAC, Jill Rogers/DDDS, Barbara Mazza/DOE, Maria Locuniak/DOE, Harley Doolittle/son of Bill Doolittle & self-advocate, Nick Rivera/self-advocate, Kevin Ohlandt/parent

Staff present: Wendy Strauss, Executive Director; and Kathie Cherry, Office Manager.

MEMBERS ABSENT: Dafne Carnright, Al Cavalier, Jane Donovan, Bernie Greenfield, Terri Hancharick, Brian Hartman, Emmanuel Jenkins, Thomas Keeton, Sonya Lawrence, Karen McGloughlin, Mary Ann Mieczkowski, Beth Mineo, Shawn Rohe, Ron Russo, Brenné Shepperson, Lavina Smith.

Chairperson Robert Overmiller called the meeting to order at 7:05p.m. Robert asked for any additions or deletions to the agenda. Being there were no revisions, **a motion** was made to accept the agenda as written and the **motion was approved.**

A **motion** was made to approve the May minutes. The **motion was approved.**

A **motion** was made to accept the May financial report. The **motion was approved.**

Public Comments

There were no public comments.

Robert announced guest speakers Barbara Mazza and Maria Locuniak from the Department of Education (DOE) who presented information on the LEA (Local Education Agency) or District Determinations. A copy of their presentation is attached. A few questions were asked during the presentation. A question was asked in regard to onsite monitoring. This is conducted by DOE on a five year cycle. Risk based analysis is also conducted. The LEA annual performance reports (APR) may all be found on the DOE website.

Two indicators were added to the items reviewed this year because they were added to the items reviewed by the federal DOE. These are results indicators rather than compliance indicators. A

comment was made that since there is such a large gap in the lag time, any corrective action plans (CAP) developed to address an issue may no longer be useful due to students moving up and out, wasting DOE staff time.

A comment was made that an LEA may follow policies and procedures and still be in violation but there will not be any consequences. Discussion ensued on this possibility. It was also mentioned that only two of the schools that met their requirements did not have restrictive enrollment practices.

DOE REPORT

In the absence of Mary Anne Mieczkowski, Barbara Mazza delivered the DOE report which is outlined below:

Response to Intervention

Over the course of the 2015-2016 school year, LEAs and Charters across the state submitted Response to Intervention (RTI) Tier Data showing the percent of students in Tiers 1, 2, and 3. The DDOE reviewed the first two submissions and will review the third this month. A survey was sent to a sampling of districts to achieve a deeper level of RTI implementation data for Tiers 1, 2, and 3. The DDOE reviewed the results of the survey in addition to needs assessment data, from Literacy Cadre and Literacy Coalition, to determine areas of celebration, barriers and next steps. After a review of the data and feedback, the DDOE decided there is a need to form a Guiding Coalition that will bring together those interested in taking the next steps towards ensuring the successful, statewide implementation of RTI. The Department will bring together a group of stakeholders for a series of five meetings between September 2016 and February 2017. The guiding coalition will include stakeholders from each of the three counties at the elementary and secondary levels in both math and reading/writing. Stakeholders will consist of curriculum directors, school psychologists, math and reading specialists, RTI coordinators, principals, charter school staff/leadership, special education directors, EL coordinators/specialists, teachers, partner organizations, and DOE.

LEA Determinations

LEA Determinations (LEA report cards for compliance and results) were sent to district superintendents and charter heads of school on Tuesday, May 31, 2016.

IEP Plus Update

The DDOE in collaboration with Woodbridge School District, Appoquinimink School District, New Castle County Vo-Tech School District and Cape Henlopen School District has completed a successful pilot of IPLUS 5. In determining next steps, the DDOE reviewed feedback from parents and district staff as well as the overall software relating to functionality and user

engagement. In the coming weeks, the DDOE will be contacting Special Education Directors to schedule each LEA's conversion from IEPPLUS 4.3 to IEPPLUS 5 over the 2016 – 2017 school year.

CHAIR/DIRECTORS REPORT

Wendy reported on the Paratransit fare increase that was discussed at a recent State Council for Persons with Disabilities (SCPD) meeting. There is concern that this will create hardships for riders unable to pay the increased fare. Wendy reminded Council members that all mileage reimbursement requests should be turned in this evening since this is the last meeting of the fiscal/budget year. The new 619/early childhood coordinator is slated to begin in July to replace Verna Thompson. Wendy mentioned a meeting she attended with Dan Madrid of the Division for the Visually Impaired (DVI) and Department of Health and Social Services (DHSS) Secretary, Rita Landgraf to discuss DVI compliance monitoring in public schools. The next step will be to meet with DOE. Wendy went on to report that House Concurrent Resolution (HCR) 86 passed again. This bill proclaims the month of October to be "Disability History and Awareness Month" in Delaware and encourages all Delaware center and family based pre-schools and childcare programs, annually during the month of October, to provide instruction and events focusing on disability history, people with disabilities and the disability rights movement. Wendy ended her report by reminding committee chairs and vice chairs that their end of year reports for the annual report are due as soon as possible so we can begin work on the annual report. The Senate Joint Resolution (SJR) 4 taskforce met on June 20. SJR 4 established the Education Funding Improvement Commission to conduct a comprehensive review of Delaware's public education funding system and make recommendations to modernize and strengthen the system. The Commission included stakeholders from across the education system. The Commission has discussed several motions and recommendations on the funding system. The final report is due on June 30. Wendy mentioned that this is Robert Overmiller's final meeting as Council chairperson and thanked him for his service. Council applauded Robert for his years of service. Dafne Carnright will begin as the new chairperson on July 1.

COMMITTEE REPORTS

ADULT TRANSITION SERVICES

Chair Cathy Cowin reported that this committee met with Jill Rogers, director of the Division of Developmental Disabilities Services (DDDS). Ms. Rogers discussed the Lifespan waiver and other changes within DDDS. DDDS is working with other state agencies to better provide integration of services. Robert thanked Cathy for her report.

CHILDREN AND YOUTH

Chair Karen Eller reported that this committee met with Jill Flore from the Red Clay Consolidated School District. Ms. Flore is also a member of the Wilmington Education Improvement Commission (WEIC). She spoke with the committee on the work being done on the WEIC funding committee. She also discussed the current status of the WEIC recommendations. Karen mentioned that House Joint Resolution (HJR) 12 and House Bill (HB) 424 will be heard on the House floor tomorrow. HJR 12 must be passed by the General Assembly and signed by the Governor to implement the changes to school district boundaries in New Castle County as proposed by the WEIC. It recognizes that the Plan presented by the WEIC and approved by the Board of Education will require sufficient funding to accomplish the redistricting and other recommendations to improve student outcomes in New Castle County. HB 424 clarifies that a vote by the General Assembly in support of the proposed redistricting serves to authorize the State Board to proceed with the redistricting, but does not constitute approval of any particular revenue or spending measure proposed in the Plan of the Wilmington Education Improvement Commission. Robert thanked Karen for her report.

MEMBERSHIP

Chair Danna Levy reported that this committee discussed due process layperson panelist recruitment information and the due process panel procedures. There are now four layperson due process panelists but DOE would like to have at least eight. The length of the due process hearings varies. Information was provided on payment received by layperson panelists and requirements they must meet in order to become layperson panelists.

INFANT AND EARLY CHILDHOOD

Chair Jennifer Pulcinella reported that this committee did an end of the year wrap up. They discussed ratios charged for preschool students and the need to pull preschool out of the k-12 needs based funding unit count. Questions were asked on who the group may need to discuss this with. They also discussed meeting with Representative Carney at the GACEC retreat or in September and requested information on the next step towards receiving information on the New Castle County Memorandum of Understanding (MOU). The group would like information on the districts that have itinerant teachers. Robert thanked Jennifer for her report.

POLICY AND LAW

Chair Keith Morton reported that the committee agreed to take action consistent with the recommendations in the June, 2016 Policy and Law memo on items as reviewed in the legal

memorandum. Brian Hartman provided analysis on six bills that were reviewed and approved by the GACEC executive board in order to be submitted as quickly as possible. Laura Waterland and Brian Eng of the Disabilities Law Program provided analysis on the two regulations reviewed by the committee.

Commentary from the legal memorandum was as follows:

Senate Bill No. 239 (School Discipline)

This legislation was introduced on May 3, 2016. As of May 26, it awaited action by the House Education Committee.

Background is provided in a May 7, 2016 News Journal article. The article notes that Delaware public schools suspended 18,053 students (13.7%) of the overall student population in the 2012-13 school year. Students with disabilities comprise 13% of the overall student population but accounted for 24% of out-of-school suspensions. African-American students comprise 32% of the overall student population but accounted for 62% of out-of-school suspensions. Only 2% of the suspensions were for serious offenses.

Senate Bill No. 239 would limit use of out-of-school suspension to three circumstances (lines 45-49): 1) willfully causing or attempting to cause bodily injury; 2) threatening serious bodily injury or death to another person, except in self-defense; and 3) bringing a weapon or controlled substance onto school grounds. The legislation encourages the use of interventions other than out-of-school suspension for disruptive behavior (lines 32-44). Statistics would be compiled and published which would result in remedial activities for “outlier” schools (lines 53-93).

The legislation has obvious merit given the statistics regarding students with disabilities and other minorities, especially considering that only 2% of out-of-school suspensions were for serious offenses. However, the committee discussed three concerns.

First, while the bill is ostensibly intended to cover both districts and charter schools (lines 79 and 89), only districts are expected to publish standards informing parents of the circumstances justifying the removal of students from school settings (line 25). The sponsors may wish to consider an amendment to clarify that this section also applies to charter schools.

Second, the norm in public schools is that administrators (e.g. principal; assistant principal) authorize suspensions, not teachers. See, e.g., excerpts from Christina School District and Indian River School District codes of conduct published at <http://www.christinak12.org/studentmanual/2015-2016/Sections/PG32-Disciplinary-Processes-Procedures.pdf> and <http://www.irsd.net/common/pages/DisplayFile.aspx?itemId=8174819>. Teachers, bus drivers and other staff generally make referrals for discipline to administrators. In contrast, Senate Bill No. 239 literally authorizes teachers to impose out-of-school suspensions as a matter of State law. See, e.g. lines 45-46: “A teacher ...may address a student’s disruptive

behavior by suspending the student...” By statutorily expanding the scope of school personnel authorized to impose out-of-school suspension, the bill could inadvertently increase the number of out-of-school suspensions. Since public school policies may vary somewhat in defining who is authorized to impose an out-of-school suspension, as well as other discipline, it would be prudent to consider the following amendment, i.e., substitute “school” for “teacher or administrator” in lines 45, 33, and 34. The effect would be the same but public schools would not be forced to change their codes of conduct to invariably permit teachers to impose suspensions (lines 41-43 and 45-46) and other discipline.

Third, the legislation defines “disruptive behavior” at lines 6-8. Schools are then invited to adopt a broader definition (“further define”) of “disruptive behavior”. This is dysfunctional. It makes little sense to adopt a statutory definition and then invite schools to adopt a hodgepodge of non-conforming, amplifying definitions. It is also inconsistent with the public policy embedded in legislation (H.B. No. 42) adopted in 2011 which instructed the Department of Education to adopt “uniform definitions for student conduct” related to student discipline. Consider the following alternate remedial amendments to lines 30-31:

(2) ~~Further define and/or~~ Provide interpretive guidance or examples of ‘disruptive behavior’ set forth in subsection (a) of this section.

OR

(2) ~~Further define and/or~~ Provide an explanation or examples of ‘disruptive behavior’ set forth in subsection (a) of this section.

The Council may wish to consider sharing these observations with policymakers, including the American Civil Liberties Union (ACLU).

House Bill No. 382 (Representation of Minors in Delinquency Proceedings)

This legislation was introduced on May 12, 2016. It passed the House on May 19. As of May 26, it awaited Senate action.

Background is provided in a May 17, 2016 News Journal article. Under existing practice, the Office of Defense Services offers free legal representation to minors charged with a crime or act of delinquency even though not required by State law. Representation is available irrespective of family income. In 2014-15, the Public Defender represented youth in approximately 3,500 cases statewide. The article notes that juveniles are even less likely to be able to understand judicial proceedings than adults. Without counsel, they are more likely to end up in Division of Services for Children, Youth and their Families (DSCY&F) custody at State expense which

exceeds the cost of representation.

House Bill No. 382 would codify current practice in the Delaware Code to ensure the continued availability of such representation. The following sentence is added to the Code: “Any person under the age of 18 facing criminal charges and allegations of delinquency shall be automatically eligible for representation by the Office of Defense Services.” Historically, juveniles with disabilities have been disproportionately subjected to school discipline and criminal justice referrals. Moreover, the percentage of students in Youth Rehabilitative Services (YRS) custody with special education classifications has always been high. Therefore, the bill would have a disproportionate effect on juveniles with disabilities.

The Council may wish to consider sharing a positive analysis with policymakers, including the Office of Defense Services.

House Bill No. 400 (Medical Marijuana)

This legislation was introduced on May 19, 2016. As of May 26, it awaited action by the House Health & Human Development Committee.

Since enactment of Delaware’s original Medical Marijuana Act in 2011 (Senate Bill No. 17), the scope of eligibility for access to medical marijuana has been incrementally expanding. Most recently, intractable epilepsy and dystonia were added as qualifying conditions. See Senate Bill No. 90, enacted in 2015.

House Bill No. 400 would expand eligibility to the following: 1) adults with a terminal illness (line 14); and 2) minors with a terminal illness accompanied by pain, anxiety, or depression (lines 26-31). Access by minors would be limited to oil-based products. Further background on the legislation is provided in a May 21, 2016 News Journal article. The article notes that possession of marijuana was decriminalized in 2015, downgrading possession of an ounce from a criminal offense to a civil violation, akin to a traffic ticket.

Since the legislation provides a treatment option for individuals with terminal conditions, the Council may wish to consider sharing a positive analysis with policymakers.

House Bill No. 365 (Removal of Bar on TANF Eligibility Based on Drug Conviction)

This legislation was introduced on May 5, 2016. As of May 26, it awaited action by the House Health & Human Development Committee.

As the synopsis indicates, federal laws passed during the War on Drugs frequently barred access to public assistance programs for persons with drug felonies while allowing states to “opt out” of such bans. Most states have adopted limited or full “opt outs”. In 2011, Delaware removed the

ban on drug felon eligibility for the Food Supplement Program (formerly “Food Stamps”) through enactment of Senate Bill No. 12. The GACEC and SCPD endorsed that legislation. See January 25, 2011 SCPD memorandum. At that time the Council noted the common co-occurrence of substance abuse with mental health and other disorders. The Council also observed that limits on access to safety-net programs undermine successful reintegration of persons released from prison into the community. A recent Delaware News Journal editorial makes the same point in supporting House Bill 365. See May 18, 2016 article, “TANF Bill Sensible Step in Prison Reform”. The article reports that 24 states have adopted at least limited “opt outs” of the federal bans on Temporary Assistance to Needy Families (TANF) and Food Supplement Program eligibility. The editorial also links access to such safety-net programs to lower recidivism rates.

The TANF program has been long-recognized as an important resource for persons with disabilities. See National Council on Disability Position Paper, “TANF and Disability-Importance of Supports for Families with Disabilities in Welfare Reform” (March 14, 2003). The legislation would therefore have a disproportionate beneficial effect on persons with disabilities. The Council may wish to consider sharing a positive analysis of this initiative with policymakers.

Senate Bill No. 52 (Lay Caregivers; “CARE Act”)

This legislation was introduced on May 13, 2016. As of May 26, it had been approved by the Senate Health & Social Services Committee and awaited action by the full Senate.

Background is provided in the May 18 and May 19 articles. Consistent with the synopsis, an estimated 123,000 Delawareans provide varying degrees of unreimbursed care to adults with limitations in daily activities. In some cases, they may be expected to perform some tasks in which training would be helpful (e.g. administering medications; providing wound care; operating medical equipment). Senate Bill No. 52 would require hospitals to act as follows: 1) solicit a patient’s optional designation of one or more lay caregivers (lines 34-36); 2) record such designation in the Delaware Health Information Network (DHIN) (lines 37-38); 3) notify a lay caregiver of discharge from the hospital; 4) offer the lay caregiver an opportunity to obtain information about aftercare tasks (lines 50-54 and 60-61); and 5) share a discharge plan with the lay caregiver which includes education based on an assessment of the lay caregiver’s learning needs (lines 62-63 and 69-73). Consistent with the May 19 article, the Delaware Healthcare Association may have some technical concerns with the legislation.

The committee discussed the following observations.

First, the legislation would benefit patients and families by providing a simple way to designate a lay caregiver and the sharing of aftercare treatment guidance with the lay caregiver. This should enhance the provision of aftercare supports conforming to the discharge plan.

Second, the legislation could be improved by clarification that it covers psychiatric hospitals. The bill defines “hospital” as a facility covered by 16 Del.C. §1001 (line 22). That section includes some archaic language, including an exclusion for “sanatoriums”. One dictionary definition of a “sanatorium” is “an institution for treatment of sick persons, especially a private hospital for convalescents or patients with chronic diseases or mental disorders.” The quality and scope of discharge planning from psychiatric hospitals has been a matter of concern for many years. Indeed, the Attorney General’s Office was instrumental in prompting the inclusion of prescriptive discharge planning provisions in the Mental Health Patients’ Bill of Rights. See 16 Del.C. §5161(b)(4). Providing patients in psychiatric hospitals the option of designating a lay caregiver could enhance the viability of discharge plan implementation. Therefore, the committee recommends amending line 22 as follows: “(4) ‘Hospital’ means ~~as defined in a hospital~~ as defined in either §1001 or §5101 of this title.”

Third, private health insurers and Medicaid Managed Care Organizations (MCOs) often attempt to justify denial of limitation of services (e.g. home health aide; private duty nurse) by positing that a relative or friend should provide the requested health supports. As an illustration, see In re J.B. (DHSS October 1, 2001)[MCO unsuccessfully argued that physical therapy should be reduced with unskilled parent expected to provide exercises]. Given the financial incentive for insurers to justify denials of service, it is important to clarify that statutes allowing lay person health care assistance are not invitations to deny services covered by insurers and MCOs. For that reason, a lay caregiver authorization in the Nurse Practice Act [24 Del.C. §1921(a)(15)] includes the following underlined caveat:

- (15) A competent individual who does not reside in a medical facility or a facility regulated pursuant to Chapter 11 of Title 16, may delegate to unlicensed persons performance of health-care acts, unless of a nature excluded by the Board through regulations, provided:
- a. The acts are those individuals could normally perform themselves but for functional limitations; and
 - b. the delegation decision is entirely voluntary.
 - c. Nothing contained herein shall diminish any legal or contractual entitlement to receive health-care services from licensed or certified personnel;...

Senate Bill No. 52 contains a similar caveat (lines 75 and 82-83):

Nothing in this chapter shall be construed to do any of the following:

...(4) Remove the obligation of a third-party payer to cover any health care item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement, insurance policy, certificate of coverage, or managed care organization contract.

This is well written but could be improved as follows if the bill is otherwise being amended:

(4) ~~Remove~~ Diminish the obligation of a third-party payer to cover any health care item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement, insurance policy, certificate of coverage, or managed care organization contract.

The Council may wish to consider sharing these observations with the prime sponsors while issuing a positive analysis to policymakers generally.

Senate Substitute No. 1 for Senate Bill No. 134 (Homeless Bill of Rights)

The GACEC and SCPD issued commentary on the original version of this legislation. The Senate Substitute was introduced on May 10, 2016. As of May 26, it had been released from committee and awaited action by the full Senate.

Background is provided in the original commentary. The main difference between the original (4-page) bill and the substitute (10-page) bill is establishment of a detailed complaint resolution system. In a nutshell, an aggrieved party could file a complaint with the State Human Relations Commission for processing similar to that used for complaints filed under the Equal Accommodations Act and Fair Housing Act, 6 Del.C. Chs. 45 and 46. The bill is earmarked with a 2/3 vote requirement. The Attorney General's Office shared some concerns with the bill which may prompt an amendment. The legislation includes multiple references to persons with disabilities lacking stable housing (line 55 and 80) or living in institutions (lines 87-88). It would ostensibly benefit a highly vulnerable set of individuals with disabilities.

The committee discussed the following observations.

First, there appear to be erroneous references to “§7803(1)” at lines 65, 68, 91, and 93. It would be preferable to change the references to “§7803” consistent with lines 164 and 167. The committee would not recommend changing the references to “§7803(a)” since this could preclude filing of complaints addressing violation of §7803(b).

Second, there is an erroneous reference to §7812 in line 150. The reference is to “a civil action” but §7812 addresses criminal enforcement. The committee believes the reference should be to §7811.

Third, there is an ostensible transcription error at line 97. The “line out” provision merits review.

Fourth, in line 205, the word “is” should be “are”.

Fifth, lines 55-56 could be interpreted as limiting only prospectively enacted laws, ordinances, and regulations. This could result in a flurry of non-conforming enactments during the 90-day period prior to the effective date (line 256). Concomitantly, existing non-conforming laws, ordinances and regulations would be “grandfathered”. The sponsors could consider amending line 55 as follows: “No political subdivision of this State may enact or enforce any law, ordinance, or regulation contrary to subsection (a) of this section.

Sixth, line 19 contains the following recital: “Such an individual is granted the same rights and privileges as any other resident of this State.” This provision could have far-reaching consequences. For example, there are multiple public benefits programs in which State residency is an eligibility requirement. Compare, e.g., the DPH Cancer Treatment Program, 16 DE Admin Code 4203.4.0. Recognition of this effect could result in a significant fiscal note.

Seventh, the 90-day statute of limitations (lines 137-138) to file a complaint with the Human Relations Commission is relatively short. Contrast one year statute of limitation for Fair Housing complaints [6 Del.C. §4610(a)].

The Council may wish to consider sharing these observations with the prime sponsors while issuing separate supportive commentary to policymakers similar to the January 29 memo.

19 DE Reg. 1057 [DOE Proposed Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings Regulation (June 1, 2016)]

The Department of Education proposes to create a new regulation defining uniform due process standards for disciplinary matters and placement in alternative disciplinary settings. The regulation was originally proposed in December 2015 but has been republished to incorporate changes. Brian Hartman analyzed the regulation in the December 2015 P&L memo.

The committee discussed the following observations.

1. In §2.0, the definition of “Alternative Placement Team” contains the following recital: “Other individuals may be invited as determined by the APT.” This is unclear. Does this mean that any single member of the team is able to invite a participant or would the entire team have to agree to invite a participant? The latter interpretation would be highly objectionable since it would mean that the Division of Services for Children, Youth and their Families (DSCY&F) could be barred from having more than one participant and that a parent would not be able to invite a participant (e.g. school psychologist; Wellness Center therapist).
2. In §2.0, definition of “Alternative Placement Team”, the student is not a member of the team. The student should be a member in order to provide input. Individuals are more likely to accept a decision if they have had a voice in the decision-making. By law, alternative school programs are required to reflect “research best-practice models”. See FY16 budget epilog, House Substitute No. 1 for House Bill No. 225, §32
3. In § 2.0, definition of “parent” includes “a student who has reached the age of majority”. While this corrects some problems where an adult student might not receive information that only goes to a parent, it creates odd language anywhere there is a reference to both the student and the parent. Moreover, it creates an ambiguity where something is to be communicated only to the “parent.” The way the definition is written, notice to a “parent” of an adult student could arguably be accomplished by contacting the adult student’s parent and not the adult student. This is unacceptable. The language may be corrected throughout the regulation by changing the definition of parent to “‘Parent’ is defined as the student, if the student has reached the age of majority. If the student has not reached the age of majority, ‘parent’ is defined as [biological parent, adopted parent, etc.]”

4. In §2.0, definition of “Building Level Conference”, the contemplated meeting “is held by phone or in person”. The regulation is silent on who decides whether the meeting is held by phone or in person. The regulation should be amended to clarify that the choice should be that of the parent/student. There are two advantages to this approach: 1) an in-school meeting reinforces the importance of the conference; and 2) a phone call from a school representative could easily be misconstrued as an informal communication and not a “Building Level Conference” required by Goss v. Lopez. Since the definition of “principal” includes a “designee”, the parent could receive the call from a guidance counselor, educational diagnostician, or other support staff which could easily be misconstrued.
5. In §2.0, the definition of “Expulsion” contains an excess of substantive standards and ramifications of expulsion. Such substantive information does not belong in a definition. See Delaware Administrative Code Style Manual, §4.3.
6. In §2.0, the definition of “Grievance” envisions a complaint to a school administrator; however, there are no specific “due process” procedures for such grievances in the regulation. The regulation sets minimum procedures as “similar to the grievance guidelines as posted on the Department of Education website.” At present, there are no guidelines posted that can be easily located. As such, it is unclear whether this provides any significant due process protections.
7. In §2.0, definition of “Student Review”, the sole focus is on student progress with no mention of whether the student’s required “Individual Service Plan (ISP)” has been implemented. See 14 DE Admin Code 611.6.1. In fairness, the “Review” should include an assessment of the extent to which the services and supports included in the ISP were provided.
8. In §2.0, definitions of “Suspension (Long-term Suspension)” and “Suspension, Short-term (Short-term Suspension)”, the DOE establishes different due process standards for suspensions up to 11 consecutive school days versus 11 or more school days. While such benchmarks may be appropriate general standards, they completely ignore the alternate significant deprivation/change of placement standard - a pattern of short-term removals of less than 11 days. Consider the following:

A. The IDEA regulation (34 C.F.R. 300.536) codifies case law and long-standing federal policy as follows:

...(A) change in placement occurs if -

- (1) The removal is for more than 10 consecutive school days; or
- (2) The child has been subjected to a series of removals that constitute a pattern -
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

B. The federal Department of Education Office for Civil Rights has adopted a similar approach for decades. See OCR Senior Staff Memo, IDELR, SA-52 ((October 28, 1988). For a consistent view, see Region VI LOF to Ponca City (OK) School District, 20 IDELR 816 (July 19, 1993); and Region IV OCR LOF to Cobb County (GA) School District, 20 IDELR 1171 [district cited for maintaining a disciplinary policy which did not address series of short suspensions amounting to a change in placement].

Apart from the “pattern” approach, the Delaware regulation could reinstate the approach adopted by the Department and promoted by the Attorney General’s Office, that characterized a “suspension for more than 10 days, either consecutively or cumulatively, in any school year ...a change in placement”. Thus, if a student has had a five day suspension and a district proposes to impose a second six-day suspension, it would trigger due process consistent with a single 11-day suspension. This approach has the advantage of simplicity in administration and facilitates earlier reviews and interventions.

9. In §2.0, the definitions of “Suspension (Long-term Suspension)” and “Suspension, Short-term (Short-term Suspension)” refer to “being removed from the Regular School Program”. The definition of “Regular School Program” is limited to “participation in daily course of instruction and activities within the assigned classroom or course”. The regulation ignores suspensions from bus transportation which should be treated the same as an exclusion from school. See Region IV OCR LOF to Tennessee State Dept. Of Education, IDELR 305:51 (April 24, 1989); OCR Policy Letter to C. Veir, 20 IDELR 864, 867 (December 1, 1993).
10. Under §3.1.1.3, a principal’s preliminary investigation of offending student conduct requires the principal to make “reasonable efforts” to “*include* the allegedly offending student” (emphasis added). Lack of interviewing a student to obtain the student’s version of events may manifestly undermine the validity and reliability of the investigation results. It may also lead to unjustified police referrals under §3.2.1. Thus, the language should be stronger. First, “include” should be changed to “interview.” To further strengthen the language, the regulation could read “the principal shall interview the allegedly offending student or state with specificity the reasons the student could not be interviewed.” This places an obligation on the principal but leaves an “out” in cases where it would not be possible to interview the student.
11. §§4.1 and 4.1.1 should be amended consistent with item 9 above. The definition of “Regular School Program” is limited to “participation in daily course of instruction and activities within the assigned classroom or course”. The regulation ignores suspensions from bus transportation which should be treated the same as an exclusion from school. See Region IV OCR LOF to Tennessee State Dept. Of Education, IDELR 305:51 (April 24, 1989); OCR Policy Letter to C. Veir, 20 IDELR 864, 867 (December 1, 1993).
12. §4.1.1.3 could be improved as follows:

The student shall be given an explanation of the evidence supporting the allegation(s), including statements of each witness, and an opportunity to present his/her side of the story including any evidence.

13. In §4.2.1, Council recommends deletion of the term “welfare” since it is obtuse and immediate removal should be justified based on a threat to health or safety. Cf. Title 14 Del.C. §4112F(b)(2).
14. §5.1.2 allows a Superintendent to extend a short-term (up to 10 days) suspension with no time limit. For example, if the student is being referred for action to the Board of Education and the Board will not meet for a month, a 10-day suspension becomes a 40-day suspension. On the 11th day, the student is offered “Appropriate Educational Services” which can be in another setting (e.g. homebound) with no additional due process. Switching a child to homebound, or a different setting with new instructors, will predictably prevent a child from maintaining academic progress. Providing educational services on the 11th day should also be reconsidered. A similar New Jersey regulation, §6A:16-7.2(a)(5)1, reinstates academic instruction within five days of suspension. This is a more progressive approach which allows a student to keep up with coursework.
15. In §5.4 the notice should include the protocol for appeal, including the timetable and method to appeal pursuant to §5.4.1. As it currently reads, the regulation only requires the provision of “information regarding the districts/charters appeal or grievance process.” Information about the grievance process and the appeals process should be included. Additionally, there should be more specificity as to the information provided. For example, the time allowed to file an appeal should be included.
16. In §5.5, the decision to convene a conference in-person or by phone should be the choice of the student/parent. See discussion in item #4 above. Furthermore, the following sentence is unclear: “The Principal may waive the conference requirement.” This could be interpreted in two ways: 1) the principal can waive the conference upon parental request; or 2) the principal may unilaterally decide to not convene a conference even if a student or parent desires one. The former approach would be preferable.
17. §§7.2.1.3 and 7.2.1.4 should include a requirement that the notices include a description of due process and appeal rights.
18. §7.2.1.5.1 could be improved by explicitly authorizing the Committee to include parent/student participation.
19. §7.2.1.7 authorizes the Principal to convene a “Building Level Conference” to inform the parent/student of a referral to an Alternative Placement. The section explicitly applies to special education students. The Principal should not be making a unilateral referral to change the placement of a special education student. That is the responsibility of the IEP team.

20. §7.2.1.7.2 allows a conference to be held by phone or in person. Consistent with item #4 above, this section should be amended to clarify that the choice should be that of the parent/student.
21. §7.2.1.8 contemplates advance written notice but does not identify the time period (e.g. three business days).
22. §7.4.1.4 solely focuses on the responsibilities of the student to the exclusion of the responsibilities of the program, i.e., to fulfill services and supports identified in the required ISP. See 14 DE Admin Code 611.6.1. This is not balanced. Although the regulation refers to the ISP, it does not refer to the program's obligations under the ISP.
23. §8.1.1 contemplates a "Student Review" which omits an assessment of the extent to which the program provided the services and supports required by the ISP. The Review is incomplete without the inclusion of such information. See discussion under item #7 above. The reference to "the student's strengths and weaknesses in connection with their individualized goals and expectations" is not sufficient because it does not reference the extent to which the program provided the required services and supports.
24. §10.2.3.1 allows a conference to be held by phone or in person. Consistent with item #4 above, this section should be amended to clarify that the choice should be that of the parent/student.
25. §10.2.3 recites that the Principal will inform the parent/student that "the student will be serving a Short-term Suspension pending the outcome of the Expulsion hearing". This is not accurate. In many cases, this process will exceed the duration of a "short-term" suspension. Moreover, this section should be amended to explicitly advise the parent/student that "Appropriate Educational Services" will be provided during the pendency of proceedings. See discussion in item #14 above. See also Appeal of Student W.D. from Decision of the W. Board of Education, Decision & Order (Delaware State Bd. Of Education March 21, 1991), at 15-16 [districts cannot simply place students on indefinite suspension pending an expulsion hearing without alternative educational services].
26. In §10.3.4, the term "If requested" should be deleted. There is very little time to prepare for the hearing and processing a "request" may take days. The notice should automatically include the information. Compare Title 14 Del.C. §3138(a)(4) reflecting better practice.
27. §10.3.11.1 appears to limit representation to an attorney. Historically, non-attorneys were permitted to represent students in expulsion hearings. See, e.g., p. 14 of Guidelines on Student Responsibilities & Rights prepared by Attorney General's Office and adopted by State Board of Education, Appeal of Student W.D. from Decision of the W. Board of Education, Decision & Order (Delaware State Bd. Of Education March 21, 1991), at 16 [authorizing representation by "an adult advisor"]. The Department may wish to clarify whether representation in expulsion hearings is limited to attorneys.

28. §10.3.11.4 recites that the student can obtain a transcript of the expulsion hearing “at the student’s expense”. In most cases, the student would request the transcript in connection with an appeal to the State Board of Education. Unless changed in recent years, State Board Rules have historically required the district to submit the transcript at the district’s expense. See 9 DE Reg. 1997, 2009, 2011 (June 1, 2006), Rules 3.4.1 and 4.6 [“The transcript shall be prepared at expense of the agency below.”] At a minimum, this should be disclosed to the student and parent rather than simply advising them that they can obtain a transcript at their expense.
29. §10.3.12 authorizes a waiver of the expulsion hearing accompanied by an admission of the charges which “does not absolve the student from required consequence”. It would be preferable to include another option, i.e., admission of the conduct but contested hearing on the penalty. There are conceptually two prongs to the expulsion decision-making: 1) do facts support violation of Code of Conduct; and 2) is penalty commensurate with offense. For example, the student could argue that an expulsion is too harsh or expulsion for 90 days is more appropriate than expulsion for 180 days. See, e.g., Guidelines on Student Responsibilities & Rights, p. 11 and Appendix, Par. 30, holding that “discipline shall be fair ... and appropriate to the infraction or offense” and authorizing “a detailed hearing on the penalty”.
30. In the entire ten page regulation, the only section addressing additional protections for students with disabilities is §11.0 which consists of four extremely unclear and unenlightening sentences:

11.0 Students with Disabilities

11.1 Nothing in this regulation shall alter a district/charter school’s duties under the Individual (sic “Individuals”) with Disabilities Act (IDEA) or 14 DE Admin Code 922 through 929.

Nothing in this regulation shall prevent a district/charter school from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.

11.2 Nothing in this regulation shall alter a district/charter school’s duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district/charter School (sic “school”) from providing supportive instruction to such students.

This is a reluctant and weak approach to protecting the rights of students with disabilities. Instead of adopting a leadership role in providing districts and charter schools with useful guidance, the negative parenthetical approach adopted in §11.0 offers negligible direction. According to the Parent Information Center, nearly 23% of Delaware students suspended or expelled are students with disabilities and, of those students, 68% are students of color. See July 27, 2014 News Journal article. Disproportionate discipline of students with disabilities and other protected classes merits positive action by the Department to promote district and charter school conformity with federal and State civil rights protections.

19 DE Reg. 1059 DHSS Long Term Care Facilities-Eligibility Determinations and Post-Eligibility Treatment; Undue Hardships [June 1, 2016]

This amendment to the Delaware Social Services Manual (DSSM) regulation eliminates a very archaic provision that only allows a hardship exception to the transfer of asset and trust provisions for Medicaid long term care eligibility if there is no state facility that could take the applicant. (DSSM 20340.11 and 20400.12.1). The proposed amendment eliminates this requirement, and it is consistent with existing federal regulation, current DMMA practice, and Olmstead principles. The committee recommends that the Council endorse this amendment.

Robert thanked Keith for his report.

PERSONNEL COMMITTEE

The committee had nothing to report.

AD HOC COMMITTEES

There were no ad hoc committee reports or outside committee updates.

Robert announced visitors for the evening and advised members that copies of all letters and responses are available for viewing at the back of the room. This is the last meeting for fiscal year 2016 and there will be no full Council meetings in July, August or September. Committees will be invited to meet in September. The GACEC fall planning retreat will be held on September 30 and October 1.

A **motion** was made **to adjourn** the meeting. The **motion** was **approved**. The meeting was adjourned at 8:17 p.m.